

**MINUTES
NATIVE AMERICAN GRAVES PROTECTION AND
REPATRIATION REVIEW COMMITTEE
TWENTY-FIFTH MEETING: MAY 9 AND 10, 2003
ST. PAUL, MINNESOTA**

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Background

The Native American Graves Protection and Repatriation Review Committee was established under the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 et seq., which was signed into law by President George Bush on November 16, 1990.

Per the Review Committee's charter –

“The duties of the Committee are solely advisory. Specifically, the Committee will be responsible for:

“1. Monitoring and reviewing the implementation of the inventory and identification processes and repatriation activities required under sections 5, 6, and 7 of Public Law 101-601 to ensure a fair and objective consideration and assessment of all available relevant information and evidence;

“2. Reviewing and making findings relating to the identity or cultural affiliation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, or the repatriation of such items, upon the request of any affected party;

“3. Facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants, and Federal agencies or museums relating to the repatriation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, including convening the parties to the dispute, if deemed desirable;

“4. Compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for disposition of such remains;

“5. Consulting with Indian tribes, Native Hawaiian organizations, and museums on matters pertaining to the work of the Committee affecting such tribes or organizations;

“6. Consulting with the Secretary [of the Interior] in the development of regulations to carry out Public Law 101-601;

“7. Performing such other related functions as the Secretary [of the Interior] may assign to the Committee;

“8. Making recommendations, if appropriate, regarding future care of human remains, funerary objects, sacred objects, and objects of cultural patrimony which are to be repatriated; and

“9. Submitting an annual report to Congress on the progress and any barriers encountered in carrying out the Committee responsibilities during the year.”

The Review Committee is organized and administered according to the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1994).

Per NAGPRA, Review Committee members are appointed by the Secretary of the Interior from nominations by Indian tribes, Native Hawaiian organizations, traditional Native American religious leaders, national museum organizations, and scientific organizations.

The Review Committee reports to the Secretary. Per the Review Committee's current charter, the Manager, National NAGPRA, National Park Service (NPS) or, in the absence of the Manager, a designee serves as the Designated Federal Officer (DFO). The DFO oversees the activities of the Review Committee and through NPS provides administrative and staff support to the Review Committee on behalf of the Secretary.

Additional information about the Review Committee – including the Review Committee's charter, membership, meeting procedures, review and findings procedures, and dispute procedures – is available at the National NAGPRA Website, <http://www.cr.nps.gov/nagpra/> (select “Review Committee”).

Notice of the 25th meeting of the Review Committee was published in the Federal Register on July 18, 2002 (vol. 67, no. 138, pages 47396-47397), and April 8, 2003 (vol. 68, no. 67, pages 17082-17083).

The 25th Meeting of the Review Committee

The 25th meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Mr. Armand Minthorn at 8:30 a.m., Friday, May 9, 2003, in the Town Square A Room, Radisson City Center Hotel St. Paul, St. Paul, MN.

Review Committee members in attendance –

Mr. Armand Minthorn, Chair
Mr. Garrick Bailey
Mr. James Bradley
Mr. Lawrence Hart
Ms. Vera Metcalf
Mr. John O'Shea
Ms. Rosita Worl

Designated Federal Officer in attendance: Mr. John Robbins (Manager, National NAGPRA, NPS, U.S. Department of the Interior (DOI), Washington, DC)

Attorney/Advisor in attendance:

Ms. Carla Mattix, DOI, Solicitor's Office, Washington, DC

National NAGPRA (DOI, NPS, Washington, DC) staff in attendance –

Ms. Martha Graham, Program Officer
Mr. Timothy McKeown, Program Officer
Ms. Paula Molloy, Program Officer
Ms. Karen Mudar, Program Officer
Ms. Cynthia Murdock, Program Officer
Ms. Lesa Hagel, Consultant (Rapid City, SD)

Persons in attendance during part or all of the meeting (names and affiliations as provided at the meeting by attendees) –

Ms. Lesly Awong, DOI, NPS, Hawaii Volcanoes National Park, HI
Ms. Deborah Baptisto, Ak-Chin Indian Community, Maricopa, AZ
Ms. Malia Baron, Bernice Pauahi Bishop Museum, Honolulu, HI
Mr. Timothy Begay, Navajo Nation Historic Preservation Department, Window Rock, AZ
Mr. Joe Big Medicine, Jr., Southern Cheyenne-Arapaho Tribes of Oklahoma, OK
Ms. Renee Boen, South Dakota Archeological Research Center, Rapid City, SD
Mr. De Soto Brown, Bernice Pauahi Bishop Museum, Honolulu, HI
Mr. William Brown, Bernice Pauahi Bishop Museum, Honolulu, HI
Ms. Rosemary Caye, Confederated Salish and Kootenai Tribes, Pablo, MT
Mr. Markly Chee, Navajo Nation Historic Preservation Department, Window Rock, AZ
Mr. Joe Day, Minnesota Indian Affairs Council, Bemidji, MN
Mr. Michael Evans, DOI, NPS, St. Paul, MN
Mr. Andrew Favorite, White Earth Reservation, Ponsford, MN
Ms. Myra Giesen, DOI, Bureau of Reclamation, Office of Policy, Lawrence, KS
Ms. Lynne Goldstein, Smithsonian Institution, Smithsonian Repatriation Review Committee; Michigan State University, East Lansing, MI
Mr. Wendell Greek, U.S. Department of Defense, Army, Army Reserve Command, Fort McCoy, WI
Ms. Cynthia Kay Hall, Minnesota Historical Society, St. Paul, MN
Mr. Robert Hommon, DOI, NPS, Pacific Island Support Office, Honolulu, HI
Mr. William Latady, Bois Forte Heritage Center, Tower, MN
Mr. Russell Leighty, American Museum of Natural History, New York, NY
Mr. Luc Litwinionek, American Museum of Natural History, New York, NY
Ms. Cyd Martin, DOI, NPS, Intermountain Region, Moose, WY

Mr. Douglas McCoard, Native American Alliance of Ohio, Lucasville, OH
Ms. Jean McCoard, Native American Alliance of Ohio, Lucasville, OH
Ms. Nell Murphy, American Museum of Natural History, New York, NY
Ms. Angela Neller, Wanapum Heritage Center, Grant County PUD, Ellensburg, WA
Mr. William Pedro, Cheyenne-Arapaho Tribes of Oklahoma, OK
Mr. Patrick Pierre, Grand Portage Band of Lake Superior Chippewa, Grand Portage, MN
Ms. Victoria Raske, Grand Portage Band of Lake Superior Chippewa, Grand Portage, MN
Ms. Helen Robbins, Field Museum, Chicago, IL
Mr. Alonzo Sankey, Cheyenne-Arapaho Tribes of Oklahoma, OK
Ms. Vi Smith, American Museum of Natural History, New York, NY
Mr. La'akea Suganuma, Royal Hawaiian Academy of Traditional Arts, Honolulu, HI
Mr. Jerry Walton, Alaska National Guard, Ft. Richardson, AK
Wapahasa, Dakota Oyate, Morton, MN
Mr. Joe Williams, Sisseton-Wahpeton Tribe, Rosholt, SD
Ms. Karenne Wood, Association on American Indian Affairs, Rockville, MD
Mr. Larry Zimmerman, Minnesota Historical Society, St. Paul, MN

Introduction

Mr. Minthorn welcomed the Review Committee and members of the audience and stressed the importance of the public's working with the Review Committee in implementing NAGPRA. Mr. Williams, Sisseton-Wahpeton Sioux Tribe, gave the opening invocation each day. Review Committee members and NPS staff introduced themselves. Mr. Robbins thanked the Review Committee members for their participation in the meeting. Mr. Robbins said that the meeting met all FACA requirements and asked the members of the audience to register as part of the meeting record.

Mr. Day, Minnesota Indian Affairs Council, extended an invitation for the Review Committee, NPS staff, and public to attend a reception to be held at Fort Snelling State Park on Saturday, May 10, 2003, 6:30 p.m. The reception was hosted by the Minnesota Indian Affairs Council, the Minnesota Historical Society, and the Upper Sioux Community.

Review of the Agenda

Mr. Minthorn reviewed the meeting agenda.

Review of the Seattle, WA, Review Committee Meeting Minutes

Authority. Federal Advisory Committee Act (FACA) regulations 41 C.F.R. Part 102-3.165: "(a) . . . The chairperson of each advisory committee must certify the accuracy of all minutes of advisory committee meetings," and "(c) The Designated Federal Officer (DFO) must ensure that minutes are certified within 90 calendar days of the meeting to which they relate."

Topic. The Seattle, WA, meeting minutes were reviewed by the Review Committee. On February 10, 2003, the DFO certified the minutes as required by FACA. The Review Committee chair signed the minutes as approved on February 11, 2003. The Seattle, WA, meeting minutes are posted on the National NAGPRA Website. Mr. Robbins explained that with the Seattle, WA, meeting minutes, the format of the minutes was changed for clarity from a narrative to an outline format.

Discussion/Recommended action. The Review Committee expressed appreciation for the new format of the minutes.

Dispute: Royal Hawaiian Academy of Traditional Arts and Bishop Museum

Authority. 25 U.S.C. 3006, Section 8, “(c) Responsibilities. – The [Review Committee] established under subsection (a) shall be responsible for –... (4) facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable.” 43 C.F.R. Section 10.17, “(b) Review Committee Role. The Review Committee may facilitate the informal resolution of disputes relating to these regulations among interested parties that are not resolved by good faith negotiations...”

Topic. The Royal Hawaiian Academy of Traditional Arts requested the Review Committee’s assistance in facilitating the informal resolution of a dispute with the Bernice Pauahi Bishop Museum regarding the manner in which the museum transferred cultural items to 13 claimant culturally affiliated Native Hawaiian organizations (“claimants”) and whether repatriation of the cultural items had occurred.

Introduction

Mr. O’Shea served as chair of the dispute at Mr. Minthorn’s request. Mr. Robbins reported that the Review Committee received documentation provided by the parties before the meeting with sufficient time for adequate review. Mr. Minthorn stated that the DFO and Chair determined that this dispute was appropriate to be heard by the Review Committee per the Review Committee’s Dispute Procedures.

Ms. Worl asked if the parties to the dispute were present. Mr. O’Shea stated that the parties were the Royal Hawaiian Academy of Traditional Arts, Honolulu, HI, and the Bishop Museum, Honolulu, HI, and both were present at the meeting. Ms. Worl asked if all Native Hawaiian organizations named in the published Federal Register notices under discussion in the dispute (Federal Register 2000, volume 65, number 66; FR Doc. 00-8350 and FR Doc. 00-8351), were formally notified. Mr. Robbins stated that notice was given through publication of the meeting in the Federal Register. Ms. Worl recommended notifying all individuals or groups who may be involved in a dispute, even if they are not direct parties.

Mr. Bradley explained that the Review Committee members received correspondence from a Native Hawaiian organization questioning the Review Committee’s authority to consider this dispute, and asked for clarification from the Review Committee’s attorney-advisor. Ms. Mattix stated that the Solicitor’s Office believed that it would be appropriate for the Review Committee to consider the dispute. Ms. Mattix also noted that the dispute process was advisory and attributes no specific rights to any of the parties.

Presentations by the parties to the dispute

Mr. La’akea Sukanuma, Royal Hawaiian Academy of Traditional Arts, introduced himself and offered a blessing, both in Hawaiian and English. Mr. Sukanuma summarized the chronological record of the return of 83 cultural items from the Kawaihae Caves Complex to Hui Malama I Na Kupuna O Hawai’i Nei (Hui Malama) and subsequent actions by Native Hawaiian organizations and the museum. The chronological record, as well as a list of pertinent facts reviewed by Mr. Sukanuma, was summarized in a letter from Mr. Sukanuma to Mr. Robbins dated March 18, 2002.

The basic facts of the case, as summarized by Mr. Sukanuma –

1. On February 26, 2000, the museum in Honolulu, HI, loaned 83 items from the Kawaihae Caves Complex collection to Hui Malama, 1 of 4 Native Hawaiian organizations then recognized by the museum.
2. Hui Malama claimed to have sealed the 83 items in the Forbes Cave, one of the Kawaihae Caves, on the island of Hawaii.
3. Attempts by the museum to recall the loan from Hui Malama were unsuccessful.
4. An April 12, 2001, letter from the museum to the claimants stated that the museum had completed the NAGPRA requirements for repatriation. The academy and other claimants believe that repatriation did not take place because the museum did not have control or possession of the 83 items and 12 of the 13 Native Hawaiian organizations never received the 83 cultural items.

5. Claimants continued to meet and developed the Document of Truth and Agreement, which was faxed to the museum on August 4, 2001.
6. An August 7, 2001, letter from the museum to the claimants stated the museum's position: the museum considered its role and statutory responsibility under Section 10.10(d) of NAGPRA to be completed since the claimants could not decide on final disposition. The letter further stated that since the museum repatriated the human remains and funerary objects to the claimants on April 12, 2001, any action involving final disposition became the sole discretion of the claimants since the museum transferred legal ownership on April 12, 2001.
7. The academy continued to discuss the matter with the museum until March 18, 2002, when the museum informed the academy that the museum considered the matter closed. Also on March 18, 2002, the academy requested that the Review Committee consider the dispute between the academy and the museum.

Mr. Sukanuma referenced a report by Roger Rose entitled, "The Enigma of Forbes Cave." Mr. Rose was asked to prepare the report by DOI, NPS, Hawaii Volcanoes National Park, which also has objects from the Kawaihae Caves Complex in the park collections. The academy had provided the Review Committee with an excerpt of the report as part of the academy's documentation for the dispute. Mr. Sukanuma expressed concern that he was asked to verify his status as representative of the academy. Both Mr. Sukanuma and the academy provided written verification of Mr. Sukanuma's status as the academy's representative.

The academy asked the Review Committee to find or recommend that –

1. Repatriation of the cultural items from Kawaihae Caves Complex did not occur.
2. Intentional errors were made in the loan process.
3. The museum's process of claimant selection needs to be reviewed.
4. The definitions of funerary objects and objects of cultural patrimony in NAGPRA do not necessarily fit Hawaiian culture.
5. The museum should apologize for its actions against the claimant organizations and their spokesperson, Mr. Sukanuma.

Mr. William Brown, Bishop Museum, read a prepared statement detailing the museum's position. The museum concluded that because of errors in process, the repatriation of 83 items loaned by the museum to Hui Malama on February 26, 2000, was not completed, and the museum's April 12, 2001, letter to claimants of these items, which purported to complete repatriation, was invalid. In light of this conclusion, the museum intends to continue the repatriation process for the 13 claimants and work in close consultation with the claimants to secure return of the items to the museum so that repatriation may move forward without prejudice to final decision on disposition of the 83 items. To this end, the museum intends to renew its request that Hui Malama return the 83 items that were loaned to them on February 26, 2000, and whose return was overdue. The museum asked the Review Committee to support the museum's conclusion and intended course of action. The museum asked the Review Committee to recommend that Hui Malama return the items to the museum immediately.

Questions by the Review Committee

The Review Committee asked questions of both parties to clarify different issues involved in the dispute. The parties made the following clarifications in response to questions by Review Committee. Mr. Brown said that the museum agreed with the academy that the repatriation process was flawed. He added that the most fundamental error made by the museum was the loan of the items to Hui Malama, during which process Hui Malama misrepresented the approval of the other three claimants and the interim storage of the items. Both Mr. Sukanuma and Mr. Brown stated that Hui Malama claims to have returned the items to a cave but there is no independent verification, as the cave was sealed with a masonry wall. Mr. Brown stated that the 83 items, referred to as "human remains" and "funerary objects," are all artifacts. The only human remains, pursuant to NAGPRA, were hair, teeth, and bone incorporated into six of the 83 items. Mr. Sukanuma clarified that the reburied human remains (iwi) in the cave should not be disturbed, but that the 83 items should be recovered.

Ms. Worl raised the possibility of further claimants and asked about the definition of a Native Hawaiian organization pursuant to NAGPRA. Mr. Brown stated that the museum considers itself to be a Native Hawaiian organization but at this time does not intend to act as a claimant in this issue. Mr. Sukanuma stated that the Document of Truth and Agreement was a result of an agreement to disagree among the claimants in order to allow the museum to continue with its obligation to recover the cultural items. Mr. Brown stated that the museum sent a letter to each claimant detailing the museum's position change on this issue. Mr. Sukanuma stated that a majority of the claimants share the position that he represented at the meeting and have signed an agreement to that effect, which was presented to the Review Committee at the Tulsa, OK, meeting. Mr. Sukanuma stated that many of the claimants were not present at the St. Paul, MN, meeting for financial reasons. Mr. Brown asked the Review Committee to endorse the museum's conclusion that the repatriation was not completed and support the museum's plan to invite all claimants to participate in further consultation to try to reset the process and address the errors that were made. Mr. Bailey stated that he saw no deterrent, under NAGPRA, for these items' being considered cultural patrimony.

Discussion/Recommended action

Mr. Bradley stated that this issue was based on museum compliance with NAGPRA. Based on the parties' presentations, the repatriation process used by the museum was fundamentally flawed and therefore remains incomplete. Ms. Worl stated that from her perspective, the repatriation was concluded and ownership transferred after the publication of the Federal Register notices and the lack of objection during the 30-day waiting period, followed by the museum's letter of April 12, 2001, informing the claimants that ownership was transferred and the museum's NAGPRA requirements had been met. Ms. Worl stated that the 13 claimants need to address this issue among themselves. She expressed concern that the Review Committee's involvement and findings in this issue could set an undesirable precedent.

Mr. Minthorn stated that when the consultation process fails, repatriations can be flawed. Errors were made during this repatriation process, but through adequate consultation, the process could be corrected. Ms. Metcalf stated her concern that all claimants were not included in the dispute process. Mr. Hart referenced the diverse traditional practices, considerations of spiritual power, and legal issues that were involved in this case. Mr. Bailey stated that if the Review Committee took no action then they were condoning what was at best a morally questionable act by one claimant, as well as negating the responsibility of the museum to implement NAGPRA. Mr. O'Shea stated he was pleased with the museum's willingness to correct this situation, even at great cost to the museum. Mr. O'Shea supported following the recommendations presented and agreed upon by both parties.

The Review Committee asked Ms. Mattix to review NAGPRA's requirements for repatriation. Ms. Mattix stated that NAGPRA outlines a process of repatriation although it does not define a point at which there is a change in legal possession or control after transfer. Notification is one step in the process and is not by itself legal transfer of ownership of items. Ms. Mattix identified Section 10.10 as one useful reference, in that it describes the repatriation process.

Findings and recommendations

Mr. Bradley proposed language for the Review Committee findings, which the Review Committee discussed. While acknowledging the position of the academy and the museum that the 83 cultural items at issue in this dispute were objects and not human remains, Ms. Worl questioned whether all of the claimants would agree with this position. Ms. Worl recommended using a more precise definition of the 83 items in order to avoid misidentification. Mr. Sukanuma stated that the academy's dispute with the museum was limited to the 83 items and no claimants would support the removal of any ancestral remains from the Forbes Cave. Several Review Committee members stated that in order for all 13 claimants to have an equal voice in the disposition process, the museum needs to reassert control over the cultural items. Ms. Worl stated that she did not agree that the museum currently held title to the 83 items. Mr. O'Shea suggested specifically recommending that access to the cultural items be granted to all claimants. The Review Committee considered recommending that the museum and claimants reevaluate their classification of the 83 items. Ms. Worl was not comfortable with the recommendation and asked that the recommendation be deleted.

Mr. Bradley suggested that the following sentence commending the parties for their willingness to continue to consult and seek appropriate repatriation and disposition solutions.

The Review Committee findings and recommendations by a majority vote of six to one –

“This dispute seeks to establish whether an appropriate repatriation occurred between the Bishop Museum and 13 Native Hawaiian claimants for 83 items described as ‘human remains’ and ‘funerary objects’ recovered from the Kawaihae Caves complex (Forbes Cave) in Hawaii in the early 20th Century. The 13 claimants are those listed in two Federal Register notices: FR Doc. 01-5940 and FR Doc. 01-5941. The 83 items are those listed in the Bishop Museum shipping invoice BP-20194, dated February 26, 2000. In Federal Register notices published on behalf of the Bishop Museum, the 83 items are described as ‘human remains’ and ‘funerary objects.’

“Having reviewed documentation submitted by the Royal Hawaiian Academy of Traditional Arts, one of the 13 claimants, and the Bishop Museum, as well as having considered their oral presentations, the Review Committee finds that – One, the repatriation process used by the Bishop Museum for the 83 items was flawed and remains incomplete. Two, the place and manner of return for the 83 items has not been determined consistent with the regulations. Three, the Bishop Museum is responsible for the completion of the repatriation process for the 83 items.

“The Review Committee recommends that – One, the Bishop Museum renew the consultation process for repatriation of the 83 items. Two, the Bishop Museum recall the loan of the 83 items to the Hui Malama I Na Kupuna O Hawai’i Nei on February 26, 2000. Three, the 13 recognized claimants in the consultation process be treated in a respectful and equitable manner. Four, the 83 items be made available to all parties in the consultation.

“The Review Committee commends the Royal Hawaiian Academy of Traditional Arts and the Bishop Museum for their willingness to continue consultation and for their positive attitude towards finding the most appropriate repatriation and disposition solutions.”

Ms. Worl stated that she was unable to support the findings and recommendations. Ms. Worl stated that repatriation occurred and title passed from the museum to the 13 claimants with the Notice of Intent to Repatriate published in the Federal Register on March 9, 2001, and the lapse of 30 days in which no objection was made. Ms. Worl stated she would write a minority opinion. The Review Committee agreed that the notice of the findings and recommendations published in the Federal Register would include the Ms. Worl’s minority opinion.

Conclusion

National NAGPRA will publish the Review Committee’s findings and recommendations and the minority report subsequent to receipt of the minority report text from Ms. Worl.

National NAGPRA Reports

Mr. Robbins stated that the reporting period for the current National NAGPRA reports was October 1, 2002, through March 31, 2003. The reports were in the Review Committee members' binders, available for the public at the meeting, and available on the National NAGPRA Website. The National NAGPRA has set two standard reporting periods for each year — October 1 through March 31 and April 1 through September 30 — which correspond with the Federal fiscal year (FY). [The National NAGPRA Reports distributed at the St. Paul NAGPRA Review Committee meeting are available on the National NAGPRA Website: <http://www.cr.nps.gov/nagpra/>, select "National NAGPRA Reports," then select "St. Paul Meeting Report."]

The Review Committee discussed the following National NAGPRA reports –

NAGPRA Grants

Ms. Worl asked about the variance in the amount of money reprogrammed from the grants appropriation for FYs 1997-2003. Mr. Robbins explained that the reprogrammed amount has been fairly consistent at approximately 10 percent of the total grants appropriation. In FY 2001, the National NAGPRA received supplemental funding from NPS to address the notice backlog, which accounted for the lower reprogrammed amount in FY2001.

Disputes

Ms. Worl recommended that a summary of the Review Committee's findings and recommendations be included in the Action section for each dispute.

Action List

Ms. Worl referred to item 6.a. on the Action List, which reported on the Review Committee's request for the U.S. Department of Justice's process/model of consultation. Ms. Worl said that the Review Committee has an obligation to consult and asked that the National NAGPRA develop a process to meet this obligation.

Federal Agency Implementation

Mr. Minthorn stated that Federal agency implementation remains a high priority. Mr. Minthorn stated that local Federal agencies need to be invited to attend Review Committee meetings and report on their work with Indian tribes, accomplishments, and concerns. Mr. Minthorn added that local Federal agencies should be invited to the Albuquerque meeting to allow for a direct dialogue with the Review Committee.

Mr. Robbins stated that the Review Committee would have the most success in hearing from Federal agencies if the Review Committee would frame specific topic areas or questions. Mr. Bradley recommended that the Review Committee members list the specific Federal agencies and topics they would like to have on the Albuquerque meeting agenda, including policies for inadvertent discoveries and policies for working with Indian tribes. Ms. Worl stated she would be interested in hearing about reburial policies.

Ms. Mudar reported that the National NAGPRA plans to hold a series of meetings with Federal agencies to discuss Federal agency reporting to the Review Committee and regulation section 10.7, disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony.

Outreach and Training

Ms. Molloy stated that mandated travel budget cuts may affect the outreach and training activities of National NAGPRA. National NAGPRA is looking at cost-effective methods to continue to implement these activities.

Contaminated Collections

Authority. 43 CFR 10.10 (e). "[as part of the repatriation process, the] museum official or Federal agency official must inform the recipients of repatriations of any presently known treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony with pesticides, preservatives, or other substances that represent a potential hazard to the objects or to persons handling the objects."

Mr. Minthorn asked if any Indian tribes were involved with the DOI Contaminated Collections Work Group. Ms. Molloy, a member of the work group, explained that the work group was comprised of DOI staff members who work with Indian tribes on the issue of contaminated collections. Ms. Molloy agreed to relay Mr. Minthorn's statement to the work group that the work group should contain Native American representation. Ms. Worl asked if the work group was going to develop advice addressing the issues of potential risk and hazards. Ms. Molloy stated that the work group members recognize the importance of the issues and understand that the solutions will need to be developed on a case-by-case basis through consultation. Ms. Metcalf asked if museums and Federal agencies would be required to submit new summaries, with information regarding contamination, to Native communities. Ms. Molloy stated that notification of potential contamination was not a summary requirement in the regulations. The regulations require museums and Federal agencies to make recipients of cultural items aware of any known treatments, but the work group encourages institutions to share new information and encourages notification early in the repatriation process.

International Repatriation

Background. National NAGPRA prepared an initial report on international repatriation in response to questions raised repeatedly at Review Committee meetings.

Mr. Bradley expressed appreciation for the report. Ms. Metcalf asked if NAGPRA grants could be used to facilitate international repatriation. Ms. Molloy stated that the issue would be placed on the Action List for study. The Review Committee asked what Federal agencies' responsibilities would be for the collections outside of the United States that had been removed from lands that were Federal or tribal lands at the time of collection. Mr. Robbins stated that the question would be added to the Action List for study.

Culturally Unidentifiable Native American Human Remains

Authority. 3 C.F.R. 10.10, Repatriation. "(g) Culturally unidentifiable human remains. If the cultural affiliation of human remains cannot be established pursuant to these regulations, the human remains must be considered culturally unidentifiable. Museum and Federal agency officials must report the inventory information regarding such human remains in their holdings to the Departmental Consulting Archeologist who will transmit this information to the Review Committee. The Review Committee is responsible for compiling an inventory of culturally unidentifiable human remains in the possession or control of each museum and Federal agency and for recommending to the Secretary specific actions for disposition of such human remains."

Ms. Murdock presented an interactive sample of the culturally unidentifiable human remains database and described both the contents and the user-friendly capabilities of the database. The sample database contained information from 18 museums and universities (3 Federal agencies withdrew from the project due to projected inventory revisions) and represented 9,567 human remains and 16,399 associated funerary objects. The database contains information (when known) on State, county, minimum number of individuals, associated funerary objects, age, and a Notes section with information on site name, accession number, and culture. Institutions will be able to submit revisions to National NAGPRA. Ms. Murdock stated that 86 percent of institutions that have submitted an inventory have been entered into the database, representing an estimated 65 percent of the total information. Some institutions with large collections have yet to be entered, accounting for the difference in percentages. The figure of 86 percent was an increase from the estimated 40 percent reported at the Seattle meeting. Ms. Murdock proposed making the accession number a searchable field to aid museums in the review process. In response to a question by Mr. O'Shea, Ms. Murdock stated that the age information was entered only when provided by the institution and was based on a before-present date from 1950. Mr. O'Shea stated that the information could be misleading to people who assume that those dates correspond to true radiometric information, when in fact many of them are estimates based on cultural information. Ms. Murdock stated that she would be open to suggestions by the Review Committee regarding the database structure and contents.

Status of NAGPRA Regulations

Background. When drafting the statute, Congress assigned responsibility for promulgating NAGPRA regulations to the Secretary of the Interior, who delegated drafting responsibility to NPS. Proposed NAGPRA regulations were published in the Federal Register in 1993; 43 C.F.R. 10 was published in 1995, with five reserved sections –

Section 10.7, disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony. Ms. Mudar reported that she is scheduling a series of consultation meetings with Native American groups, museum and scientific organizations, and the Review Committee toward the development of this section. Ms. Mudar stated that National NAGPRA would provide a provisional consultation schedule at the next Review Committee meeting. In response to a question by Mr. O'Shea, Ms. Mudar stated that Section 10.7 is contained in 25 U.S.C. 3002 (b) and pertains to a specific category of human remains and other cultural items. Ms. Worl stated that Section 10.7 needs to clearly include Native Hawaiian organizations and should consider the Executive Order mandating consultation with Indian tribes.

Section 10.11, Disposition of culturally unidentifiable human remains. Mr. Robbins stated that a sample database was created and reviewed by the museums and institutions to be used as part of the regulation review process (see "Culturally Unidentifiable Native American Human Remains" above).

Section 10.12. Civil penalties. The final civil penalties regulations were published on April 3, 2003 and went into effect on May 5, 2003. Mr. Robbins reported that a technical correction (replacing the interim regulation rather than adding to the interim regulation) was pending. National NAGPRA was currently developing internal procedures for implementing the civil penalties regulations.

Section 10.13. Future applicability. Mr. Robbins stated that a draft regulation was ready for his review.

Section 10.15(b). Failure to claim where no repatriation or disposition has occurred. Mr. Robbins stated that Ms. Mudar was assigned to this regulation.

Other National NAGPRA Business

Per the Review Committee's request, Mr. Robbins addressed the following four topics –

Financial Update. In FY 2003, National NAGPRA operates with four accounts, the grants account (\$2,201,000), the grants administration account (\$177,000), program funding (\$353,000), and funds reprogrammed from the appropriated grants funding (\$250,000). Ms. Worl requested that National NAGPRA report on the program's financial status at each meeting.

Program Manager. Mr. Robbins is currently the program manager for National NAGPRA. NPS will not consider staffing changes for the program until at least the end of FY 2003.

Associate Director, Cultural Resources. The Acting Associate Director, Cultural Resources is Mr. deTeel Patterson Tiller. The position (vacant since January 2003) has been advertised. Applications were due on April 4, 2003. Mr. Minthorn requested that an invitation be extended to the Director of NPS and the Associate Director, Cultural Resources to attend upcoming Review Committee meetings.

Spirit Cave Dispute. The Review Committee requested an update on the status of the Spirit Cave situation. Mr. Robbins reported that National NAGPRA was not able to contact Ms. Stephanie Damadio, National Curator for the U.S. DOI, Bureau of Land Management (BLM), during the meeting. Mr. Minthorn asked National NAGPRA to report on the status of the Review Committee's recommendations regarding the Spirit Cave dispute and on the status of the human remains that were the subject of the dispute at the next Review Committee meeting.

Conclusion

1. National NAGPRA will incorporate the Review Committee's recommendations into subsequent National NAGPRA reports.

2. National NAGPRA will invite local Federal agencies to the Albuquerque meeting.
3. National NAGPRA will address the Review Committee's questions regarding –
 - a. whether NAGPRA grants could be used to facilitate international repatriation, and
 - b. Federal agencies' responsibilities for collections outside of the United States that were removed from Federal or tribal lands.
4. Ms. Murdock will continue to oversee the development of the culturally unidentifiable human remains database. The Review Committee approved the database changes that Ms. Murdock proposed.
5. Mr. Robbins will provide the Review Committee with a financial update at Review Committee meetings.
6. Mr. Robbins will extend the Review Committee's invitation to the Director of NPS and the Associate Director, Cultural Resources.
7. National NAGPRA will try to determine the status of the Spirit Cave dispute and associated human remains and report to the Review Committee.

Review Committee Business

Report to the Congress

Authority. 25 U.S.C. 3006, Section 8 (h), requires – “Annual Report – The committee established under subsection (a) shall submit an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.”

Report to the Congress for 1999, 2000, and 2001. Mr. Robbins stated that the Report to the Congress for 1999, 2000, and 2001 was completed and ready for distribution. Copies were provided to the Review Committee and were available at the meeting for the public. Mr. Robbins stated that the report would be available on the National NAGPRA Website (<http://www.cr.nps.gov/nagpra/>, select “Review Committee,” then select “Reports to the Congress”). He asked that Review Committee members provide suggestions for additional distribution of the report. National NAGPRA is responsible for distribution to the appropriate members of Congress.

Report to the Congress for 2002. For the Report to the Congress for 2002, Mr. Robbins suggested that Review Committee should draft the text for the topics covered in pages 4 through 11 of the Report to the Congress for 1999, 2000, and 2001. National NAGPRA was prepared to insert updated statistical information. Mr. Robbins stated that if the draft was ready for final discussion at the Albuquerque meeting, the final document could be produced by the end of the calendar year.

Discussion/Recommended action. The Review Committee expressed appreciation for the final Report to the Congress for 1999, 2000, and 2001. Mr. Bradley suggested that Tribal Historic Preservation Officers receive a copy of the report. Ms. Worl suggested that regional tribal organizations in Alaska and Hawaii receive a copy of the report.

Conclusion

1. National NAGPRA will distribute the Report to the Congress for 1999, 2000, and 2001 as the Review Committee requested at the meeting. Mr. Robbins invited Review Committee members to individually submit names and addresses for additional recipients.
2. Ms. Worl and Mr. Bailey will draft the Report to the Congress for 2002 for discussion at the Albuquerque meeting.

Charter

Background. The current charter of the Native American Graves Protection and Repatriation Review Committee was signed by the Secretary of the Interior on May 2, 2003, and is in effect from November 16, 2002, to November 16, 2004.

Topic. Mr. Robbins described the changes between the previous charter and the current charter. The changes include –

1. Item D.1. Clarification of the role of the individual members.
2. Item D.2. Change in terms of appointment to 4 years for new appointments and 2 years for reappointed incumbents.
3. Item D.4. Change in reimbursement of Review Committee members to the daily rate for Level IV of the Executive Schedule.
4. Item E. Addition of a new section, “Ethics Responsibilities for Members.”
5. Item F.2. Change of Designated Federal Officer to Manager, National NAGPRA program.
6. Item F.5. Addition of sentence, “No Advisory Committee members, and no member of any subgroup of this Committee, shall participate in any matter in which the member has a financial interest.”
7. Item F.6. Change in wording from committee to subcommittee, “The Committee may create subcommittees from its membership...”

Discussion/Recommended action. In response to a question by Mr. Bailey, Mr. Robbins explained that 2-year charters are standard for Federal advisory committees. Ms. Worl asked if dispute hearings were included in item F.5. Mr. Robbins stated that the intention of that section was to include all aspects of the Review Committee’s work.

Meeting Procedures

Mr. Robbins described the changes between the previous Meeting Protocol document and the draft Meeting Procedures document. The changes include –

1. Title change from “Meeting Protocol” to “Meeting Procedures,” consistent with the NPS Office of Policy terminology.
2. Item I. Addition of a new section, “Authority,” detailing the authority under which meetings occur.
3. Item III. Addition of a new section, “Agenda,” describing how the Review Committee chair and DFO will determine the agenda.
4. Item IV. “Public Notice” no longer requires public notice of meetings 90 days in advance of the meeting. Notices will be published with as much advance notice as possible. [FACA regulations 41 C.F.R. Part 102-3.150 (a) requires that a Federal Register notice be published at least 15 calendar days prior to an advisory committee meeting.]
5. Item V. Addition of a new section, “Distribution of Meeting Materials,” describing the process for distributing materials and the meeting agenda to the Review Committee members and public.
6. Item VI. “Public Participation,” additional clarification of the process for written and public comment.
7. Item VII. Addition of a new section, “Transcripts,” detailing the process for producing the meeting record.
8. Item VIII. Addition of a new section, “Minutes,” detailing the process for producing the meeting minutes.

Discussion/Recommended action. For Item V, Ms. Worl asked that the practice of allowing all Review Committee members to comment on the agenda be included in the Meeting Procedures. For Item VII, Mr. O’Shea asked that the practice of providing electronic copies of the meeting transcript be included in the Meeting Procedures. For Item VIII, Ms. Worl asked that the minutes of each meeting be included on the agenda for the subsequent meeting for possible comment.

Conclusion. Mr. Robbins revised the Meeting Procedures with the requested changes. The Review Committee chair signed the revised procedures before the meeting adjourned on May 10, 2003.

Nominations

Authority. 25 U.S.C. 3006, Section 8: “(b), Membership—(1) The Committee established under subsection (a) shall be composed of 7 members, (A) 3 of whom shall be appointed by the Secretary from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders with at least 2 of such persons being traditional Indian religious leaders; (B) 3 of whom shall be appointed by the Secretary from nominations submitted by national museum organizations and scientific organizations;

and (C) 1 who shall be appointed by the Secretary from a list of persons developed and consented to by all of the members appointed pursuant to subparagraphs (A) and (B).”

Topic. Mr. Robbins explained that one position on the Review Committee was currently vacant. Mr. Hart’s term expired in September 2001, and Mr. Hart has continued in the position as provided in the Review Committee’s charter. This vacancy was advertised in the Federal Register. Nominations were received and were currently under review within the DOI for appointment. Three positions would become vacant in June 2003 — those held by Mr. Bradley, Mr. Minthorn, and Mr. O’Shea — and the notice for soliciting nominations for those positions is in process towards publication in the Federal Register. Mr. Hart and Mr. Minthorn were nominated pursuant to Section 8 (b)(1)(A). Mr. Bradley and Mr. O’Shea were nominated pursuant to Section 8 (b)(1)(B).

Discussion/Recommended action. Mr. Bailey asked how the notice soliciting nominations will be distributed. Mr. Robbins explained that the notice would be published in the Federal Register. National NAGPRA also will feature the solicitation on the National NAGPRA Website and distribute a paper copy of the published notice to Indian tribes, museums, and museum and scientific organizations.

The Review Committee expressed concern that more than half of the Review Committee positions could be filled with new members by the next meeting, potentially causing lack of continuity and delays in progress of the Review Committee’s business.

Conclusion. Ms. Worl and Mr. Minthorn will draft a letter from the Review Committee to the Secretary of the Interior detailing the Review Committee’s concerns.

Review and Findings Procedures

Authority. 25 U.S.C. 3006 (c)(3): “[The Review Committee shall be responsible for –] upon the request of any affected party, of reviewing and making findings related to – A. the identity or cultural affiliation of Native American human remains and other cultural items, or B. the return of human remains and other cultural items.”

Topic. Mr. Robbins explained that the proposed Review and Findings Procedures document was new and directly addresses the issue of affected party.

Discussion/Recommended action. Mr. O’Shea stated that the Review Committee defined affected party at the Seattle, WA, meeting and was prepared at that point to move forward with that language. Mr. Robbins requested clarification on the definition of affected party – specifically regarding nonfederally recognized tribes, donors, and nontribal organizations or individuals representing groups of either tribes or tribal individuals. Ms. Worl stated that she was happy with the definition developed at the Seattle meeting, but not the language presented at the St. Paul meeting. Mr. O’Shea suggested deleting the final sentence of the definition, “Such an organization may include individuals, groups, organizations, etc. that are not an ‘affected party’ as defined here.” The Review Committee agreed to keep the Review and Findings Procedures document separate from the Dispute Procedures document.

Conclusion. Mr. Robbins revised the Review and Findings Procedures with the requested changes. The Review Committee chair signed the revised procedures before the meeting adjourned on May 10, 2003.

Dispute Procedures

Authority. 25 U.S.C. 3006 (c)(4): “[The Review Committee shall be responsible for –] facilitating the resolution of disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museum relating to the return of human remains and other cultural items, including convening the parties to the dispute if deemed desirable.”

Topic. Mr. Robbins described the changes between the previous Dispute Resolution Procedures document and the proposed Dispute Procedures. The changes include –

1. Title change from “Dispute Resolution Procedures” to “Dispute Procedures.”

2. Item II.B., addition of definition of “Interested party,” a term used in the regulations at 43 CFR 10.17 (b).

Discussion/Recommended action. Mr. O’Shea suggested deleting the last sentence of the definition of interested party, “Such an organization may include individuals, groups, organizations, etc., that are not an ‘interested party’ as defined here.” Ms. Worl requested that a section be added to the Dispute Procedures document indicating that all claimants to a particular action will be notified of a pending dispute. Mr. Hart requested that a section be added to the Dispute Procedures directing parties to a dispute to contact the Review Committee only through the DFO.

Conclusion. Mr. Robbins revised the Dispute Procedures with the requested changes. The Review Committee chair signed the revised procedures before the meeting adjourned on May 10, 2003.

Governance

Background. Mr. Robbins reviewed the draft Governance document, which provides guidance on the administration of the Review Committee.

Discussion/Recommended action. Mr. O’Shea stated that item IV, Officers, differs from the standard practice of the Review Committee and suggested that references to officer terms and the establishment of a vice-chair should be removed. Mr. O’Shea expressed concern regarding item IV.C.2.(e), which provides for the DFO’s chairing the meeting at the discretion of the Director of the NPS, and item VIII, which provides for the DFO’s revising the by-laws independently of the Review Committee. Mr. Robbins stated that those provisions came from the FACA regulations. Mr. O’Shea stated that these provisions may be provided by FACA but do not need to be part of the Review Committee’s by-laws and should be removed. The other Review Committee members agreed with the changes proposed by Mr. O’Shea.

Upcoming Review Committee meetings

The Review Committee discussed possible venues for future Review Committee meetings. Ms. Worl reminded the Review Committee that she had extended an invitation for the Review Committee to meet in Juneau, AK.

The Review Committee confirmed the next meeting will be November 21-22, 2003, in Albuquerque, NM. The Review Committee tentatively set the subsequent meeting for May 2004 in Washington, DC.

Correspondence from Hui Malama I Na Kupuna O Hawai’i Nei

The Review Committee agreed that Mr. Minthorn would send an e-mail response to Hui Malama regarding their correspondence on the dispute between the academy and the museum.

Scheduled Presentations and Public Comment

Native American Alliance of Ohio

Topic. Ms. Jean McCoard, Native American Alliance of Ohio, updated the Review Committee on the status of the Fernald Reinterment Project and presented information packets to the Review Committee. The project continues to move forward. The new head of the U.S. Department of Energy Ohio Field Office will soon sign a position paper that will offer land at Fernald for the reinterment of repatriated human remains. The Ohio Field Office will work with Native American tribes and groups to develop a plan for routine inspections and maintenance. Once the position paper is in effect, Native Americans will develop an oversight board. Ms. McCoard stated that despite progress made in NAGPRA, the law is still misunderstood. Nonfederally recognized Indian groups face additional challenges. Ms. McCoard stated that the Native American Alliance of Ohio would like to thank the Review Committee for addressing the organization’s concerns in the Review Committee’s Report to the Congress for 1999 – 2001.

The Native American Alliance of Ohio extended an invitation to host a Review Committee meeting in Newark, OH, in fall 2005. Ms. McCoard proposed holding the meeting in conjunction with a conference for representatives from States without federally recognized tribes. The purpose of the conference would be to develop strategies to facilitate compliance with NAGPRA in these States, consider regional solutions, clarify NAGPRA issues regarding cultural affiliation and nonfederally recognized tribes, and suggest reasonable amendments to NAGPRA or revisions to NAGPRA regulations.

Discussion/Recommended action. Mr. Minthorn acknowledged the invitation and asked Mr. Robbins to consider the invitation, as well as consider supporting the conference on NAGPRA issues for nonfederally recognized Indian groups. In response to a question by Mr. Hart, Ms. McCoard stated that the Fernald site is environmentally clean. Mr. Minthorn requested that the DOE be invited to report on their success regarding this collaborative project at the Albuquerque meeting.

National Park Service Implementation Update

Background. Mr. Frank McManamon, Departmental Consulting Archeologist, NPS, Archeology and Ethnography program, provided a status report on three Park NAGPRA topics. The report was presented by Ms. Paula Molloy.

Actions to implement recommendations from the National Park System Advisory Board on determinations of cultural affiliation under NAGPRA. The National Park System Advisory Board's recommendations will be implemented by expanding and improving guidance for NPS staff on making determinations of cultural affiliation. Text will be developed to enhance the existing NPS technical guidance on NAGPRA implementation, specifically Appendix R of the Cultural Resource Management Guideline. Revisions to Appendix R are scheduled for completion in February 2004.

Status of NPS's response to the Hopi tribal chairman regarding a request for the NPS Director's review of determinations of cultural affiliation of Aztec Ruins National Monument, Chaco Culture National Historical Park, and Mesa Verde National Park. NPS staff have provided assessments of the tribal chairman's request for review and the determinations made by the park managers. Possible responses have been drafted and are under discussion. No final decisions have been made by the Deputy Director and Director of NPS.

Status of DOI and NPS activities in the Kennewick Man case. DOI attorneys Ms. Carla Mattix, Ms. Mary Anne Kenworthy, and Mr. Jason Roberts continue to consult with the Department of Justice as the case progresses. Mr. Frank McManamon continues to provide technical advice for the U.S. Department of Justice and U.S. Army Corps of Engineers. The Government has filed its brief appealing the decision of District Court Judge John Jelderks with the 9th Circuit Court of Appeals. The coalition of claimant tribes has also filed their brief with the 9th Circuit Court. Ms. Mattix stated that oral arguments in the appeals could be heard in late summer 2003.

Discussion/Recommended action. Mr. Minthorn requested a copy of the Mr. McManamon's report. Mr. Minthorn asked about the status of the Review Committee's recommendations in the dispute between the Hopi Tribe and Chaco Culture National Historical Park. Mr. Robbins reported that NPS has made a substantial effort to address the issue of how determinations of cultural affiliation are made Servicewide, and has a plan for developing guidance for NPS staff. NPS's Director currently is making decisions regarding the park's reassessment of cultural affiliation.

Minnesota Historical Society's Report on Implementation in Minnesota

Presentation. Mr. Larry Zimmerman, Minnesota Historical Society (MHS), introduced himself as the head of MHS's department of archeology. Mr. Zimmerman said that he has been with MHS for 6 months and was pleased with MHS's NAGPRA implementation efforts. The archeological collections at MHS were acquired primarily through archeological work and donations. MHS has more than 6,000 Native American objects in the historical collection and approximately 60 percent of the more than one million objects in the archeological collections originated from American Indian heritage sites. MHS sent copies of NAGPRA summaries and inventories to all Native American groups represented by the collections. MHS has had 37

official consultation visits with 22 different Native American groups. MHS has several pending repatriation claims in process. Mr. Zimmerman described MHS's successful consultation and repatriation experiences. Mr. Zimmerman credited part of MHS's NAGPRA implementation success to MHS's Indian Advisory Committee, which is comprised of tribally appointed members from each recognized Indian tribe or band and from the Minnesota Indian Affairs Commission (MIAC). Mr. Zimmerman stated that MHS will experience significant budget and staffing cuts and hoped that MHS would be able to continue to meet its NAGPRA obligations.

Discussion/Recommended action. The Review Committee commended MHS's positive efforts at NAGPRA implementation. Mr. Bailey asked about future cooperative relationships with local Indian groups and organizations. Mr. Zimmerman stated that MHS would like to expand this cooperation, although these efforts may be hampered by budget cuts. Mr. Zimmerman gave examples of the cooperative efforts, including a museum jointly operated between the Mille Lacs Tribe and MHS.

Minnesota Indian Affairs Commission's Report on Implementation in Minnesota

Presentation. Mr. Joe Day, executive director of the Minnesota Indian Affairs Commission (MIAC), stated that the good working relationship between MIAC and MHS began in the early 1970s. Protocols were developed to address discoveries of human remains. Over 100 years ago, early surveyors mapped over 10,000 burial mounds, which are still on record today. This record is useful when planning development projects to avoid burial mounds. Mr. Day described the early efforts of MIAC to meet NAGPRA requirements. Mr. Day stated that MIAC repatriated 1,068 culturally unidentifiable human remains subsequent to the Review Committee's recommendation in 1998. MIAC currently has 325 individuals in its custody, including 186 that have been inventoried and for which notices have been published in the Federal Register, 50 individuals yet to be identified, 30 individuals awaiting repatriation, 30 individuals for which the Review Committee requested additional information prior to recommending repatriation, and several individuals awaiting the identification process. Mr. Day reported that, under Minnesota law, to knowingly disturb a cemetery is a felony. All burial sites in Minnesota are considered cemeteries.

Discussion/Recommended action. Mr. Bailey expressed appreciation for Minnesota's progressive cemetery laws. Mr. Day stated that he recognized the problems of States with no federally recognized tribes, described earlier by Ms. McCoard, and that the negotiations necessary to implement such laws are worth the effort. Mr. Bailey stated that Native Americans in other States could consider using State law in a similar manner to help implement NAGPRA.

South Dakota Archeological Research Center

Discussion/Recommended action. Due to a schedule change, Ms. Renee Boen of the South Dakota Archeological Research Center (SARC) was not present when this agenda item was called. Mr. Hart addressed the issue of the repatriation request by the SARC for 70 sets of culturally unidentifiable human remains. Mr. Hart stated that not all tribal groups who were in the geographical regions represented by this request were adequately consulted, and cited his people, the Southern Cheyenne, as an example. Mr. O'Shea stated that this case was very similar to the repatriation request approved for the State of Minnesota in 1998 and suggested that the SARC use that situation as a model for their consultation and repatriation efforts. Mr. Bailey urged that all consultation be conducted in a formal, documented manner to preserve the record. Mr. Hart stated that he meant no disrespect to those individuals who worked long and hard on this issue, and specifically commended the efforts of Mr. Allen and Mr. Red Wing. Ms. Worl requested that the Review Committee's past recommendation to the State of Minnesota be incorporated into the letter to the SARC and that an apology be offered for the agenda change, as well as an invitation to the Albuquerque meeting.

Ms. Boen appeared before the Review Committee subsequent to the above discussion. Mr. Minthorn summarized the earlier discussions of the Review Committee and their recommendations. Ms. Boen stated that the SARC would fulfill the Review Committee's recommendations, including additional consultation.

Navajo Nation

Topic. Mr. Timothy Begay, Navajo Nation, addressed the Review Committee regarding the definition of affected party. Mr. Begay said that the concerns of the Navajo Nation had been addressed in the Review Committee's earlier discussion on affected party.

Mr. Markly Chee, Navajo Nation, read a prepared statement by Mr. Alan Downer, Director, Navajo Nation Historic Preservation Department, addressing the issue of affected party with specific reference to three shields that are referred to as the Pectol shields. According to Mr. Downer's statement, the shields currently are needed by traditional Navajo religious leaders for the practice of traditional Navajo religious ceremonies. The superintendent of Capitol Reef National Park published a notice in the Federal Register indicating the park's intent to repatriate the shields to the Navajo Nation. Descendants of Mr. Ephraim P. Pectol, who removed the shields from Federal land in 1926, objected to the superintendent's determination and contacted National NAGPRA. The superintendent contacted National NAGPRA and stated that he was advised not to repatriate the shields to the Navajo Nation pending the Review Committee's determination of the definition of affected party and interested party.

Discussion/Recommended action. Mr. Robbins explained that he had corresponded with descendants of Mr. Pectol and he would inform them of the Review Committee's discussion of affected party. The Review Committee suggested that Mr. Robbins provide a copy of the letter to the Navajo Nation. Mr. Robbins stated that once the Review Committee's procedures are finalized and posted on the Website, National NAGPRA would respond to the appropriate parties detailing the outcome of this issue.

Conclusion. Mr. Robbins will write letters to descendants of Mr. Pectol and to Mr. Downer informing them of the Review Committee's decision on the definition of affected party.

Public Comment

Mr. Joe Big Medicine, Jr., Cheyenne-Arapaho Tribes of Oklahoma, said he represented the Southern Cheyenne and agreed with Mr. Hart's comments regarding the repatriation request by the SARC, as well as sentiments expressed at the meeting that consultation is the heart of repatriation.

Ms. Myra Giesen, Bureau of Reclamation, requested that the culturally unidentifiable human remains database include fields identifying both the possessing and controlling museum or Federal agency.

Mr. William Pedro, Cheyenne-Arapaho Tribes of Oklahoma, stated that the main purpose of NAGPRA was to return ancestors back to rest, and he was happy with the additional consultation requirements regarding the repatriation request by the SARC.

Mr. Alonzo Sankey, Cheyenne-Arapaho Tribes of Oklahoma, stated that he and Mr. Pedro were the official NAGPRA representatives for their tribe and would be reporting back to tribal members on the meeting. Mr. Sankey agreed with Mr. Pedro regarding the additional consultation requirements for the repatriation request by the SARC.

Mr. Joe Williams, Sisseton-Wahpeton Tribe, described the success of repatriating over 3,000 human remains. Mr. Williams apologized for any tribes that were overlooked in the consultation process involving the repatriation request by the SARC. Mr. Williams stated that they would do what the Review Committee requested. Mr. Williams asked for the support of the Review Committee in gaining protection for sacred sites nationwide.

Meeting Adjournment

Mr. Bradley expressed appreciation for his tenure on the Review Committee and the knowledge he has gained. Ms. Worl stated she was pleased with the direction of the Review Committee and its progress. Ms. Worl commended the National NAGPRA staff on the improved reporting system. Ms. Metcalf commented on the excellent material preparation by the National NAGPRA staff and encouraged continued

progress on the NAGPRA regulations. Ms. Metcalf described local efforts at knowledge repatriation — return of pictures, documents, and oral diaries — and recommended that other groups consider this source of information. Mr. Hart expressed appreciation for the cooperative efforts of the parties involved in the dispute, and attributed the good results in part to the sacred pipe utilized in the invocation and daily prayer at the meeting. Mr. Hart stated he had a good experience serving on the Review Committee and thanked his colleagues on the Review Committee and the National NAGPRA staff. Mr. O'Shea stated he was privileged to have served on the Review Committee and participate in the NAGPRA process. Mr. Minthorn summarized his experience on the Review Committee and expressed his willingness to continue to serve the efforts of NAGPRA on the Review Committee. Mr. Minthorn stressed the importance of public participation in providing guidance to the Review Committee toward the implementation of NAGPRA.

Mr. Robbins thanked the Review Committee members whose terms would expire prior to the next meeting — Mr. Bradley, Mr. Hart, Mr. Minthorn and Mr. O'Shea — for their service on the Review Committee.

The meeting adjourned at 3:15 p.m. on Saturday, May 10, 2003.

Certified –

/s/ Mr. John Robbins,
Assistant Director, Cultural Resources
Manager, National NAGPRA
Designated Federal Officer, Native American Graves Protection
and Repatriation Review Committee

Date August 7, 2003

Approved on behalf of the Review Committee –

/s/ Mr. Armand Minthorn,
Chair, Native American Graves Protection
and Repatriation Review Committee

Date August 13, 2003